

1 Manatt, Phelps & Phillips, LLP  
2 ROBERT H. PLATT (CA Bar # 108533)  
3 E-mail: rplatt@manatt.com  
4 ADRIANNE E. MARSHACK (CA Bar # 253682)  
5 E-mail: AMarshack@manatt.com  
6 11355 West Olympic Boulevard  
7 Los Angeles, CA 90064-1614  
8 Telephone: (310) 312-4000  
9 Facsimile: (310) 312-4224

10 Attorneys for Defendants  
11 NETWORK TELEPHONE SERVICES, INC.,  
12 DECADE COMMUNICATIONS, INC.,  
13 FRONTIER CREDIT, INC., and AMERICAN  
14 OPERATOR SERVICES, INC.

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT  
WESTERN DIVISION

PAUL GANNON, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

NETWORK TELEPHONE  
SERVICES, INC., a California  
corporation; DECADE  
COMMUNICATIONS, INC., a  
California corporation; FRONTIER  
CREDIT, INC., a California  
corporation; AMERICAN OPERATOR  
SERVICES, INC., a California  
corporation; JOHN and JANE DOES 1  
through 100; and JOHN DOE  
ENTITIES 1 through 10,

Defendants.

No. CV12-9777 RGK (PJWx)  
CLASS ACTION--DISCOVERY  
**STIPULATED PROTECTIVE  
ORDER**

Hon. R. Gary Klausner, Courtroom 850

Complaint filed: November 15, 2012

The parties to this action, through their counsel of record, have stipulated and agreed that an order under Federal Rule of Civil Procedure 26(c) is necessary and useful to protect the confidentiality of documents and other information obtained in the course of discovery in this action, and have stipulated and agreed to be bound by the terms of this Protective Order (“Protective Order”).

The materials to be exchanged in the course of this litigation may contain confidential information including but not limited to trade secret or other confidential research, marketing, financial or other commercial information. The purpose of this Protective Order is to protect the confidentiality of such materials during the litigation.

## **DEFINITIONS**

1. The term “Confidential Information” shall mean and include any information disclosed in this litigation, regardless of the medium or manner in which it is generated, stored, maintained, or produced (including, among other things, testimony, transcripts, documents and other tangible things), which is deemed by a party to this case to constitute trade secret, proprietary, or sensitive information, including but not limited to financial data, research and development information; customer and supplier information; company personnel information; marketing strategies and information; strategic business information (including but not limited to business plans, forecasts, cost information, or logistical information); and any other information that affords the producing party in this litigation an actual or potential economic advantage over others.

2. The term “Outside Counsel” shall mean outside counsel of record, and other attorneys, paralegals, secretaries, and other support staff employed in the following law firms: Manatt, Phelps & Phillips, LLP; Terrell Marshall Daudt & Willie PLLC, The Law Offices of Stefan Coleman, and Kreindler & Kreindler.

3. The term “Designating Party” shall mean a party that designates information as Confidential Information.

**DESIGNATION**

4. Each party to this litigation may designate information as  
 3 “CONFIDENTIAL” or “CONFIDENTIAL - FOR COUNSEL ONLY” if, in the  
 4 good faith belief of such party and its counsel, the materials fall within the  
 5 Confidential Information definition herein and the disclosure of such information  
 6 (including, in the case of “CONFIDENTIAL - FOR COUNSEL ONLY,” disclosure  
 7 to anyone other than Outside Counsel) could be prejudicial to the business or  
 8 operations of such party, or would violate court orders and/or confidentiality  
 9 restrictions involving parties not involved in this litigation. A Designating Party  
 10 must take care to designate for protection only those parts of documents that  
 11 qualify, so that other portions of documents for which protection is not warranted  
 12 are not designated as “CONFIDENTIAL” or “CONFIDENTIAL - FOR COUNSEL  
 13 ONLY.”

5. To designate as “CONFIDENTIAL” or “CONFIDENTIAL - FOR  
 14 COUNSEL ONLY,” the producing party must mark each page of the document  
 15 with the appropriate designation before producing it. However, for documents  
 16 produced by another party or a non-party, or court transcripts, or any documents  
 17 produced prior to entry of this Protective Order, a party can assert confidentiality  
 18 through correspondence to all other parties that specifically identifies each  
 19 document that will receive a confidentiality designation.

6. Deposition testimony and/or deposition exhibits shall be designated on  
 21 the record during the deposition whenever possible. A party may also designate  
 22 such testimony and exhibits after transcription of the proceedings; a party shall  
 23 have until twenty (20) days after receipt of the deposition transcript to inform the  
 24 other party or parties of the portions of the transcript so designated.

7. The disclosing party shall have the right to exclude from attendance at  
 26 said deposition, during such time as the Confidential Information is to be disclosed,  
 27 any person other than the deponent, Outside Counsel (including their staff and  
 28

1 associates), the court reporter, the videographer, and the person(s) agreed upon  
 2 pursuant to paragraph 10 below.

3       8. Designation of Confidential Information as “CONFIDENTIAL” or  
 4 “CONFIDENTIAL - FOR COUNSEL ONLY” shall extend to all copies, excerpts,  
 5 data, summaries, and compilations derived from such Confidential Information, as  
 6 well as any testimony, conversations, or presentations by the parties hereto or their  
 7 counsel that discloses such Confidential Information.

8       9. If a party, through inadvertence, produces any Confidential  
 9 Information without designating it in accordance with this Protective Order, the  
 10 designating party may give written notice to the receiving party[ies] that the  
 11 information produced is deemed “CONFIDENTIAL” or “CONFIDENTIAL - FOR  
 12 COUNSEL ONLY” and should be treated in accordance with that designation  
 13 under this Protective Order. Upon receipt of such notice, the receiving party must  
 14 treat the Confidential Information as designated hereunder. If the receiving party  
 15 has already in good faith disclosed the information before receiving such notice, the  
 16 receiving party shall have no liability for such good faith disclosure, but shall notify  
 17 the designating party in writing of each such disclosure. Counsel for the parties  
 18 shall agree on a mutually acceptable manner of labeling or marking the  
 19 inadvertently produced materials as “CONFIDENTIAL” or “CONFIDENTIAL -  
 20 FOR COUNSEL ONLY.”

**ACCESS AND USE OF PROTECTED MATERIAL**

21       10. All Confidential Information designated as “CONFIDENTIAL” or  
 22 “CONFIDENTIAL - FOR COUNSEL ONLY” shall not be disclosed by the  
 23 receiving party to anyone other than those persons designated herein and shall be  
 24 used solely in connection with this litigation, and not for any other purpose,  
 25 including any business or competitive purpose or function.

26       11. Information designated “CONFIDENTIAL - FOR COUNSEL ONLY”  
 27 shall be viewed only by (a) Outside Counsel; (b) in-house counsel; (c) outside

1 experts or consultants retained for purposes of this litigation, in accordance with the  
 2 provisions of paragraph 12; (d) court reporters and videographers in connection  
 3 with transcribing or recording a deposition or hearing; (e) the Court and its  
 4 personnel; and (f) the jury.

5       12. Information designated “CONFIDENTIAL” shall be viewed only by  
 6 those persons designated in paragraph 10 above, and by the parties (or employees  
 7 thereof), provided each such party or employee of a party has read this Protective  
 8 Order in advance of disclosure and has agreed in writing, by executing an  
 9 Acknowledgment in the form attached hereto as Exhibit “A,” to be bound by its  
 10 terms.

11       13. The right of any expert or consultant to receive any information  
 12 designated “CONFIDENTIAL” or “CONFIDENTIAL - FOR COUNSEL ONLY”  
 13 shall be conditioned on the expert’s prior execution of an Acknowledgment in the  
 14 form attached hereto as Exhibit “A.” Notwithstanding the foregoing, any expert or  
 15 consultant who works for a competitor of the producing party may not receive  
 16 Confidential Information of that party.

17       14. Nothing herein shall prohibit a party, or its counsel, from disclosing a  
 18 document designated “CONFIDENTIAL” or “CONFIDENTIAL - FOR  
 19 COUNSEL ONLY” to any person indicated on the face of the document to be its  
 20 originator, author or recipient.

21       15. Each person receiving Confidential Information designated hereunder  
 22 shall maintain it in a manner which ensures that access is limited to persons entitled  
 23 to receive it under this Protective Order. If such Confidential Information is  
 24 disclosed to any person other than a person authorized by this Protective Order, the  
 25 party responsible for the unauthorized disclosure must immediately bring all  
 26 pertinent facts relating to the unauthorized disclosure to the attention of the other  
 27 parties and, without prejudice to any rights and remedies of the other parties, make  
 28 every effort to prevent further disclosure by the party and by the person(s) receiving

the unauthorized disclosure.

## **CHALLENGING DESIGNATION**

16. At any stage of these proceedings, any party may object to a designation of information as “CONFIDENTIAL” or “CONFIDENTIAL - FOR COUNSEL ONLY.” The party objecting to confidentiality shall notify counsel for the designating party in writing of the objected-to materials and the grounds for the objection. The parties shall first make a good faith effort to resolve the objection informally. If the dispute is not resolved within ten (10) business days of receipt of such a notice of objections, the objecting party may file a motion with the Court. Until the Court rules on the motion (or the matter is resolved between the parties), the materials at issue shall be treated as Confidential Information as designated by the designating party.

FILING UNDER SEAL

17. Any party seeking to file with the Court any documents or other evidentiary material designated as “CONFIDENTIAL” or “CONFIDENTIAL - FOR COUNSEL ONLY” shall seek permission of the Court to file such documents or other material under seal in accordance with Local Rule 79-5.1. A motion to file under seal shall be served on all parties, and the documents or other materials in question shall be lodged with the Court conditionally under seal.

## **ADDITIONAL PROVISIONS**

18. Nothing herein shall prejudice the right of any party to object to the production of any discovery material on the grounds permitted by the Federal Rules of Civil Procedure, including that the material is protected as attorney-client privileged or attorney work product.

19. Nothing herein shall be construed to prevent disclosure of Confidential Information designated hereunder if such disclosure is required by law or by order of the Court. In the event that such disclosure is required, the party or other person who is obligated to disclose shall promptly upon receipt of the order or other

1 process requiring the disclosure notify the party who designated the Confidential  
 2 Information.

3       20. Upon final termination of this action, including any and all appeals,  
 4 counsel for each party shall, upon request of the producing party, return all  
 5 Confidential Information to the party that produced the information, including any  
 6 copies, excerpts, and summaries thereof, or shall destroy same at the option of the  
 7 receiving party, and shall purge all such information from all machine-readable  
 8 media on which it resides. Notwithstanding the foregoing, counsel for each party  
 9 may retain all pleadings, briefs, memoranda, motions, and other documents filed  
 10 with the Court that refer to or incorporate Confidential Information, and will  
 11 continue to be bound by this Protective Order with respect to all such retained  
 12 information. Further, attorney work product materials that contain Confidential  
 13 Information need not be destroyed or returned, but, if they are not destroyed, the  
 14 person in possession of the attorney work product will continue to be bound by this  
 15 Protective Order with respect to all such retained information.

16       21. The restrictions and obligations set forth herein shall not apply to any  
 17 information that: (a) the parties agree should not be designated Confidential  
 18 Information; (b) is already public knowledge; (c) has become public knowledge  
 19 other than as a result of disclosure by the receiving party, its employees, or its  
 20 agents in violation of this Protective Order; or (d) has come or shall come into the  
 21 receiving party's knowledge lawfully and independently of the production by the  
 22 designating party.

23       22. All provisions of this Protective Order shall survive the conclusion of  
 24 this action, and shall continue to be binding after the conclusion of this action  
 25 unless subsequently modified by agreement of the parties or further order of this  
 26 Court. For the purposes of enforcing this Protective Order and resolving any  
 27 disputes thereunder, the Court retains jurisdiction over the parties and all persons  
 28 provided access to Confidential Information under the terms of this Protective

1 Order.

2       23. All persons bound by this Protective Order are hereby notified that if  
3 this Protective Order is violated in any manner, all persons and entities who commit  
4 such violations are subject to any and all monetary and other sanctions as the Court,  
5 after a hearing, deems to be just.

6       24. The Court may modify the terms and conditions of this Protective  
7 Order for good cause, or in the interest of justice, or on its own order at any time in  
8 these proceedings. Additionally, this Protective Order may be modified by  
9 agreement of the parties, subject to approval by the Court.

10      25. The terms and provisions of this Protective Order, and designation of  
11 any Confidential Information hereunder, shall also apply to and bind any party who  
12 appears in this action subsequent to the entry of this Protective Order.

13      26. The terms and provisions of this Protective Order shall be binding on  
14 the parties as a confidentiality agreement regardless of whether the Court ultimately  
15 enters it as an Order.

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17           IT IS SO STIPULATED.

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1 Dated: February 19, 2013

Manatt, Phelps & Phillips, LLP  
Robert H. Platt  
Adrianne E. Marshack

10 Date: February 19, 2013

4 By: /s/ Robert H. Platt  
5 Robert H. Platt

6 Attorneys for Defendants  
7 NETWORK TELEPHONE  
8 SERVICES, INC., DECADE  
9 COMMUNICATIONS, INC.,  
FRONTIER CREDIT, INC., and  
AMERICAN OPERATOR  
SERVICES, INC.

10 Terrell Marshall Daudt & Willie PLLC  
11 Beth E. Terrell  
12 Michael D. Daudt

13 By: /s/ Michael D. Daudt  
14 Michael D. Daudt

15 Beth E. Terrell, CSB #178181  
16 Email: bterrell@tmdwlaw.com  
17 Michael D. Daudt, CSB #161575  
18 Email: mdaudt@tmdwlaw.com  
936 North 34th Street, Suite 400  
Seattle, Washington 98103-8869  
Telephone: (206) 816-6603  
Facsimile: (206) 350-3528

19 Stefan Coleman  
20 Email: law@stefancoleman.com  
21 LAW OFFICES OF STEFAN  
COLEMAN  
22 201 South Biscayne Blvd, 28th Floor  
Miami, Florida 33131  
Telephone: (877) 333-9427  
Facsimile: (888) 498-8946

23 Gretchen M. Nelson, CSB #112566  
24 Email: gnelson@kreindler.com  
25 KREINDLER & KREINDLER  
26 707 Wilshire Boulevard, Suite 4100  
Los Angeles, California 90017  
Telephone: (213) 622-6469  
Facsimile: (213) 622-6019

27 Attorneys for Plaintiff  
28 PAUL GANNON

1                   For good cause shown, the Court GRANTS the parties' Stipulated  
2 Protective Order.

3                   IT IS SO ORDERED.

4                   Dated: February 21, 2013



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5                   The Honorable Patrick J. Walsh  
6                   United States Magistrate Judge  
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**EXHIBIT A**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT  
WESTERN DIVISION

PAUL GANNON, individually and on behalf of all others similarly situated,

No. CV12-9777 RGK (PJWx)

## Plaintiffs,

v.

NETWORK TELEPHONE SERVICES, INC., a California corporation; DECADE COMMUNICATIONS, INC., a California corporation; FRONTIER CREDIT, INC., a California corporation; AMERICAN OPERATOR SERVICES, INC., a California corporation; JOHN and JANE DOES 1 through 100; and JOHN DOE ENTITIES 1 through 10,

## Defendants.

## **AGREEMENT TO BE BOUND BY PROTECTIVE ORDER**

1 I, \_\_\_\_\_, declare and say that:

2 1. I am employed as \_\_\_\_\_ by

3 \_\_\_\_\_.

4 2. I have read and understood the Protective Order entered in the above-

5 entitled cases, and have received a copy of the Protective Order.

6 3. I promise that I will use any and all “Confidential” or “Confidential -

7 For Counsel Only” information, as defined in the Protective Order, given to me

8 only in a manner authorized by the Protective Order, and only to assist Outside

9 Counsel in the litigation of this matter.

10 4. I promise that I will not disclose or discuss such “Confidential” or

11 “Confidential - For Counsel Only” information with anyone other than the persons

12 with whom I am permitted to discuss such information, as designated, under the

13 terms of the Protective Order.

14 5. I acknowledge that, by signing this agreement, I am subjecting myself

15 to the jurisdiction of the United States District Court for the Central District of

16 California, and all courts in which appeals may be filed in these actions, with

17 respect to enforcement of the Protective Order.

18 6. I understand that any disclosure or use of “Confidential” or

19 “Confidential - For Counsel Only” information in any manner contrary to the

20 provisions of the Protective Order may subject me to sanctions for contempt of

21 court.

22 I declare under penalty of perjury under the laws of the United States

23 of America that the foregoing is true and correct.

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25 Dated: \_\_\_\_\_

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